In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 278.

WILLIAM PRESSER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

REPLY BRIEF OF PETITIONER.

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I.

1. Petitioner made no issue that the Committee was not properly constituted and would not have been pursuing its function in investigating into labor-management relationships (R. 212a). However, the Petitioner contends that in the present case the Petitioner did not obstruct or impede the due and proper administration of the law under which the Committee was investigating, or the due and proper exercise of the Committee's power of inquiry as charged in the indictment.

2. The manifested exercise of the power of inquiry by the Committee was the subpoena served upon the Petitioner on March 21, 1958 (R. 58a), for the alleged violation of which the Petitioner was indicted and convicted (R. 5a). However, the prohibition of the statute is the obstruction or attempted obstruction of the due and proper exer-

cise of the power of inquiry under which the Committee was conducting its inquiry or investigation.

The Committee's power to investigate is based upon the authority granted by Senate Resolution 74 (Gov. Ex. 5-C; R. 312a). Its exercise of that power of inquiry under its authorizing resolution must be in accordance with 2 U. S. C. § 190b and the Committee's own rules of procedure (Gov. Ex. 6; R. 313a). It is submitted, therefore, that the record does not disclose that the documents demanded were pertinent to any subject under inquiry by the Committee.

3. The contention that the element of guilty knowledge or intent of the crime was "fully established by proof" is grounded on gross assumptions not warranted by the record.

The record does not disclose with any degree of particularity that the documents were pertinent to the Committee's investigation.

The documents were not under subpoena by the Committee and the Petitioner challenged the validity of the subpoena at the time it became evident that the subpoena was a void process.

The only knowledge which the petitioner had that the documents could be pertinent to any subject under inquiry by the Committee must have come from the subpoena, for the record fails to disclose that any Committee member or employee of the Committee discussed any documents with any member of Joint Council 41, including the Petitioner, until September 13, 1959. At this time the crime as laid in the indictment had been completed.

The trial court and the prosecution inserted the element that the documents must have been in fact pertinent to the matter under inquiry by the Committee (R. 35a,

36a). When the prosecutor attempted to justify Senator McClellan's reading to the jury the testimony that investigator Sheridan had given before the Committee, the court commented that such testimony was admissible to prove that the documents were pertinent to the matter the Committee had under investigation (R. 36a). The prosecutor at this point agreed that that was the purpose of Senator McClellan's reading the testimony of investigator Sheridan (R. 36a).

A.

The Petitioner has not advanced the argument that although he had agreed to turn over records to the Committee after preliminary examination by an investigator, he now attempts to meet the charges made against him on the ground that the subpoena was defective.

First, neither the Petitioner nor any person affiliated with Joint Council 41 **agreed** to turn over Joint Council records to the Committee. The records were sought and obtained under color of the coercive power of the Committee's compulsory process.

Sheridan served the subpoena on Petitioner personally on March 21, 1958, a subpoena claimed by Sheridan to have been issued against Joint Council 41 by the Congress of the United States (R. 57a). Sheridan then went to the office of Joint Council 41 on September 9, 1958, because, as he stated, **the subpoena had not been complied with** (R. 60a, 63a). The violation of the subpoena is the only basis for obstruction, or endeavor to do so, of the Committee's power of inquiry that is laid in the indictment (R. 6a).

Second, there had been no preliminary examination of any records of Joint Council 41 prior to the service of the subpoena on March 21, 1958.

Third, the subpoena involved in this case was not merely defective, it was void.

1. The obstruction statute may not be confined or limited to those records sought through the compulsory process of the Committee. However, the Petitioner has been charged with the violation of the Committee's compulsory process. The failure of that process cannot logically warrant a conclusion that the documents were voluntarily produced. They were produced because of the coercive effect of the subpoena, which was ostensibly a valid exercise of the Committee's power to demand the documents.

The Petitioner has not misconceived his duty to the Committee under 18 U. S. C. § 1505. However, it should be clear that his duty results from the obligation of Joint Council 41 to comply with the subpoena served upon him on March 21, 1958. It is the alleged failure of the Petitioner to recognize this obligation of Joint Council 41 for which he was indicted and convicted.

To state that the Petitioner knew the Committee wanted the union invoice and memorandum is to assume a fact which is not substantiated by the record, either directly or by inference. The subpoena demanded any and all records of Joint Council 41 for a ten year period. When Sheridan served the subpoena he particularized no document or record. When Sheridan went to the office of Joint Council 41 on September 9, 1958, he examined several file cabinets (R. 63a, 66a) of records and proposed to take four separate files. Indeed, there is every indication that Sheridan did not have any particular or specific purpose in going through the files of Joint Council 41 except for the purpose of a general search for material which he felt might interest the Committee (R. 66a).

2. The Government here recognizes the distinction that exists between a subpoena **issued** by the Committee and a blank form signed by the Chairman. However, a subpoena not issued by the Chairman, or an authorized member of the Committee in writing, cannot in fact be the compulsory process of the Committee.

a. The records that were produced at the Cleveland Field Office of the Committee were produced only through the coercive effect of the subpoena and not by any agreement between Joint Council 41 and the Committee or its members. The arrangement for the production of these records was effected through Arthur Kaplan, a staff investigator of the Committee, and representatives of Joint Council 41 (R. 59a), but only pursuant to the subpoena served upon the Petitioner on March 21, 1958. Arthur Kaplan did not testify at the trial.

The arrangement effected by Arthur Kaplan was carried out between representatives of Joint Council 41 and field office personnel identified only as Paul T. Riebesell and Helen Thorpe (R. 83a, 147a) of the Cleveland Field Office. Neither Mr. Riebesell nor Miss Thorpe testified at the trial.

b. The evidence shows that in all likelihood the chances are that the subpoena was not **issued** by the Committee Chairman or any member of the Committee authorized by the Chairman in writing. The evidence is clear that Senator McClellan was not aware that any documents were being delivered at the Cleveland Field Office except by the fact that they finally appeared before the Committee (R. 29a).

The argument advanced by the Government that the evidence does not show that the issuance of the subpoena was **not** authorized by Senator McClellan, aside from

admitting that the subpoena was not the valid process of the Committee, serves only to underscore the officious act of a Committee employee. If the Committee Chairman authorized any one to issue subpoenas the Committee Rules of Procedure (Gov. Ex. 6; R. 313a) required that the authority be confined and limited to another member of the Committee and that it be in writing.

There is no evidence in the record that Senator McClellan authorized, in writing, any member of the Committee to issue the subpoena which forms the basis of the Petitioner's indictment. Nor was any such authority ever granted (R. 350).

Of more significance in this regard, however, is the fact that neither the Chairman, nor the Committee as a whole, had any authority under the Committee Rules of Procedure to delegate the Committee's power of compulsory process to any one not a member of the Committee. Therefore, neither the Chairman nor the Committee could ratify an act of a Committee employee that it could not delegate to that employee in the first instance.

Even upon the Government's assumption that the issuance of the subpoena by the Committee employees could be ratified, the ratifying act of the Committee or the Senator does not appear in the record and certainly this ratification could not have occurred before September 13, 1959,[1] at which time the crime, if any, as laid in the indictment was complete. The Petitioner's rights are fixed as of that time. *United States v. Heinszen*, 206 U. S. 370 (1907); *Silverthorne Lumber Co. v. United States*, 251 U. S. 385 (1920).

c. It is submitted that the fact that the subpoena was signed in blank renders it void and not merely defective.

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[1] The Chairman and the Committee were informed of Sheridan's charges on September 17, 1958 (R. 35a).

Whoever "issued" the subpoena and determined what documents he wanted of Joint Council 41, when, and where they should be delivered or produced, of course, had to purport to act for the Committee. To have acted on his own behalf would obviously have produced no records for his perusal.

It certainly is not obvious from 2 U. S. C. § 190b, Senate Resolution 74 and the Committee Rules of Procedure that the Congress of the United States has invested the Committee with any judicial powers whatsoever whereby it could determine the validity of the subpoenas which strangers purported to issue on its behalf contrary to its own rules of procedure.

The significant difference between the subpoena which the Petitioner has been charged with violating and subpoenas issued in blank under Rule 17a, Federal Rules of Criminal Procedure, is that subpoenas issued under the criminal rule are issued in accordance with the provisions of that rule of practice and are returnable to a judicial officer. The subpoena involved in this case was not *issued* in accordance with the provisions of Senate Resolution 74 and the Committee Rules of Procedure. The important distinction is that the subpoena under the criminal rule is returnable to a judicial officer having authority to rule. The subpoena issued by the Chairman or an authorized member is not returnable to a judicial officer, or body.

B.

The Petitioner's contention that the proper names on the demanded documents were not pertinent to any matter under inquiry by the Committee is based on the record produced by the Government against the Petitioner at the trial.

The fact that the Committee investigator made certain notes indicates that the documents demanded by the subpoena were not the subject of the Committee's inquiry, or at least the inquiry of the investigator.

The subpoena was served on the Petitioner on March 21, 1958, and purported to demand the production of all Joint Council 41 records and documents forthwith in Washington. On September 9, 1958, Sheridan, actively engaged in investigating Mr. Bender, without benefit of the field office personnel, obtained the very documents which it is now claimed had not been produced forthwith in Washington to the Committee (Br. p. 27). However, the investigator refused to give a receipt for the documents in accordance with the practice that had been established by the representatives of Joint Council 41 (R. 96a, 147a) and the field office personnel (R. 227a, 228a). Rather than being a meritless point unworthy of notice, the investigator's notes stand out as a symptom of his brazen abuse of the coercive power granted by Congress to one of its committees.

C.

The Petitioner does not contend that the Committee was not properly constituted nor does he contend that the Committee could not, as a matter of law, investigate improper activities in the labor-management field under its authorizing resolution.

The Petitioner contends that he has not obstructed or impeded, or endeavored to obstruct or impede, the due and proper exercise of the power of inquiry under which this Committee was conducting its investigation as charged in the indictment.

The argument of the Government that the "immediate purpose" of Sheridan's examination of the records was a "phase" of the overall investigation to determine whether

Mr. Hoffa was keeping his promise (R. 32a) must surely come very close to a judicial admission that the Petitioner's contention is factually correct.

The imagination of an overzealous committee investigator should not control the due and proper exercise of the power of inquiry delegated by Congress to one of its committees, nor should it determine the question under inquiry by the Committee.

D.

The direct testimony of Sheridan should not be confused with direct evidence of the commission of a crime or any act.

The Petitioner testified that he did not destroy or mutilate any documents (R. 232a) as did "all other persons who had an opportunity to do this deed."

The Petitioner testified concerning Sheridan's visit to the office of Joint Council 41 on September 13, 1958, and stated that he did not reply to Sheridan's accusation, "You have your job to do, I have mine" (R. 73a, 231a, 232a).

The evidence of the Government clearly shows that Sheridan left the office of Joint Council 41 *before* the Petitioner on September 9, 1958 (R. 70a, 172a). The Petitioner's testimony corroborates this. (R. 228a.)

The Petitioner's secretary, testifying on behalf of the Government, stated that the Petitioner was out of town on September 10 and September 11, following Sheridan's first visit to Joint Council 41 (R. 181a, 182a). The Petitioner's own testimony was that he believed that he returned from Washington on September 12, 1958 (R. 229a). There is no dispute that Sheridan's second visit to Joint Council 41 was on September 13, 1958.

The evidence which it is argued so impressed the jury and both lower courts is a complete misstatement of the record.

II.

The testimony of Senator McClellan cannot be justified as probative evidence supporting any material element of the charges laid in the indictment against the Petitioner (Br. of Pet., p. 21).

A.

1. The scope of the investigation referred to by the Government (Br. pp. 36, 37) pertained to those investigations which had resulted in the Committee's Interim Report. The Interim Report was concluded and filed with the Senate on March 24, 1958. No part of these proceedings involved the Petitioner or Joint Council 41.

2. The special findings and the legislative recommendations of the Committee have no logical significance as proof of the necessary elements of the offense with which the Petitioner has been charged (Br. pp. 20, 21). Whether there had been special findings by the Committee or legislative recommendations based upon those findings, or even an Interim Report, does not bear legally upon the elements of the crime charged. Moreover, the admission of the testimony in this regard was admitted subject to being definitely "tied up" by the prosecution (R. 26a).

The only tie up between the special findings and the legislative recommendations and the issues in this case are to be found in the prosecutor's cross examination of the Petitioner (R. 255a) and in his argument to the jury (R. 336a).

3. The testimony of Senator McClellan concerning the "clean up" committee served a number of purposes for the prosecution, none of which was conducive to a fair and impartial trial to the Petitioner.

First, the interest of the Committee in the clean up committee of the Teamsters apparently was based upon a promise that Mr. Hoffa had made to the Committee (R. 32a). After some negotiations between Mr. Hoffa and the Chairman, or other members of the Committee, had resulted in the Committee's belief that "nothing had been done" by Mr. Hoffa, the Committee decided to "ascertain just what was taking place" (R. 32a).

This testimony of the "special findings" impressed upon the jury that the organization, to which the Petitioner belonged, was admittedly full of corruption and people of bad reputation (R. 347, 348).

Second, the testimony concerning the clean up committee formed the basis for the cross examination of the Petitioner upon a matter which he had no control over nor anything to say about (R. 263a), and which was not relevant to any issue in the case.

Third, the testimony concerning the clean up committee also served as the foundation for the prosecution to argue to the jury that the interest of the Committee in Mr. Bender provided a motive for the Petitioner to destroy the documents (R. 345).

Fourth, the testimony of the clean up committee provided the prosecution with its argument to the jury that the Committee was attempting to determine whether Mr. Bender, who had been hired by Mr. Hoffa, was going to do a legitimate job. Thus, the Petitioner was provided with another motive for concealing his friendship with Mr. Bender (R. 348).

4. The **prosecutor** sought to have Senator McClellan read the testimony Sheridan gave before the Committee to verify the pertinency of "certain matters" which Sheridan

would subsequently testify to before those matters were placed in evidence directly (R. 35a).

The **court** permitted the Senator to read Sheridan's testimony because the Government stated that "these matters" were pertinent to their inquiry and this would be difficult to prove except in the manner proposed (R. 35a, 36a).

The **Petitioner** objected (R. 34a, 35a, 36a).

5. The court permitted Senator McClellan to identify the recipients of gifts because the Committee was interested in the use of union dues for that purpose (R. 43a).

The identification of the recipients of the gifts formed the basis of a vigorous cross examination of the Petitioner. The cross examination, which certainly did not attempt to elicit the truth of the matters testified to on direct examination, was also permitted over general objection (R. 255a, 256a, 257a, 258a).

The prosecutor argued to the jury that the purpose for bringing out whether or not Beck, Hoffa, Brennan or Dorfman has a bad reputation was not to reflect upon the Petitioner because, as the prosecutor stated, any one in the labor movement or any movement where there might be people of bad reputation would have some contact with them (R. 344). The real purpose, the prosecutor agreed, for bringing out the bad reputation of these men was (1) to show that the Petitioner was afraid that he might be fired by the monitors for associating with people of bad reputation, and (2) to show that some people in the Teamsters organization had bad reputations and that this would provide the Petitioner with the necessary motive for destroying the documents or concealing his association with people of bad reputation (R. 344).

6. There is no dispute that the trial court considered pertinency as a question of fact and submitted that ques-

tion to the jury upon evidence to which the Petitioner had interposed objections. It is argued now that the trial court had some discretion in this matter and that by submitting the issue to the jury actually ruled that the evidence sufficiently showed pertinency to warrant submission to the jury (Br. pp. 45, 46).

However, if the view of the trial court is correct then the conclusions of Senator McClellan (R. 45a, 46a) usurped the function of the jury and concluded the ultimate fact the jury would have had to determine. Therefore, regardless of the view the Government takes of this matter the action of the trial court deprived the Petitioner of a fair and impartial trial. *Simmons v. United States*, 206 F. 2d 427 (C. A. D. C. 1953).

B.

1. The Petitioner is not pursuing a different course for the purposes of this review from that pursued in the trial court.

The duty is upon the prosecution to prove this element of the crime and in a manner that assures the Petitioner of a fair trial. The testimony to which the Petitioner objected and which the trial court concluded should go to the jury was not admissible for any purpose. Even in *United States v. Orman*, 207 F. 2d 148, 156 (3rd. Cir. 1953) the court first determined that the questions could be pertinent from evidence *aliunde*, and then submitted to the jury whether or not they actually were.

Whether the submission of the issue of pertinency "usually favors" the accused does not warrant the conclusion that the Petitioner was favorably treated in this case. Nor can it be said that the Petitioner acquiesced in the conclusions of the court. The Objections of the Petitioner were not nullities and cannot be construed as an invitation to the

trial court to submit pertinency to the jury's determination as a matter of fact. Even now the Government can only claim that the "major portion" of Senator McClellan's testimony is admissible for some other purpose (Br. pp. 35, 46, 47), and has conceded without specifying (Br. p. 49) that in one minor instance Senator McClellan's testimony was improperly before the jury both as to pertinency and as to motive.

2. It should be noted that the "subjects of interest" of the Committee could have no bearing upon **knowledge** of the Petitioner. The knowledge properly chargeable to the Petitioner must be embodied in the subpoena, the violation of which is the basis of his indictment. The Government has recognized the purpose of the subpoena during the prosecutor's argument to the jury (R. 33a, 36a).

It is argued that it is a reasonable inference for the jury to conclude that inasmuch as the subpoena had been served upon Joint Council 41 approximately six months prior to Sheridan's visit to the office of Joint Council 41 that the Petitioner would have acquainted himself with the "subjects of interest" of the Committee, as set out in the Interim Report. This argument is completely without merit to justify the admission of the "subjects of interest" of the Committee through Senator McClellan. More specifically, the inference to be drawn from the fact that Sheridan went to the office of Joint Council 41 approximately six months following the service of the subpoena is that the Petitioner did not destroy any documents. For if the Petitioner had the knowledge attributable to him by the Government, together with the *mens rea* with which he is accused, the documents which investigator Sheridan claims to have seen on September 9, 1958, would not have been in the file to which he was granted access.

C.

1. It was never established with any degree of clarity what subject was under inquiry by the Committee. Senator McClellan was permitted to go into past "subjects of interest" which he related or read to the jury. Even on the subject of investigating Bender as chairman of the "clean up" committee, the most he could muster to a leading question was, "there was some investigation in that area" (R. 34a).

The Chairman stated that the **question** was the use of union dues for the purchase of Christmas gifts, but proceeded to narrate the "findings" concerning some of the recipients of the gifts shown on the invoice. Specifically he related the findings of those recipients whom he characterized as having bad reputations.

Sheridan testified to the pursuit of his investigation of Bender (R. 62a). He also testified he had nothing to do with the arrangement for the production of documents of Joint Council 41 to the field office. He knew the field office customarily gave receipts for documents produced by Joint Council 41, but he did not know what documents had been produced (R. 96a).

Sheridan stated that he was "aware" that some documents were not produced, but this awareness came from conversations with Miss Thorpe and Mr. Reibesell over a period of time (R. 94a). He had no specific knowledge of the production of documents by Joint Council 41 (R. 96a).

Inasmuch as Bender's affiliation with the "clean up" committee became known to the Committee in late August, 1958 (R. 29a, 30a, 62a), and Sheridan's "immediate purpose" was to investigate the veracity of Mr. Hoffa's promise of a clean up, the question under inquiry to which the subpoenaed documents could be relevant or pertinent is more than a little nebulous.

2. The reading of the testimony of Sheridan was clearly prejudicial to the Petitioner whether the reading was suggested by the Senator or not. The statement of the court's purpose in allowing the Senator to read the testimony (R. 37a) is either unintelligible or is further indication that the Committee did not have complete knowledge concerning the pertinency "of this matter".

The Petitioner in his testimony did dispute the facts as Sheridan is reported to have testified before the Committee. The Petitioner's main defense was that he was not guilty of any of the acts charged against him. If the documents were torn or missing that circumstance alone was no proof that Petitioner had torn or secreted the documents because he was away from his office most of the time before Sheridan's visits and he did not have exclusive control of the documents involved during that time (R. 165a).

The direct conflict between Petitioner and Sheridan was their testimony as it related to Sheridan's visits to the office of Joint Council 41. Both Sheridan and the Petitioner knew of the practice of giving receipts for materials of Joint Council 41 that was in effect between the Joint Council 41 and the Committee Field Office (R. 96a, 227a, 228a).

Sheridan's notes could not be considered as corroborative of his trial testimony because of the conflict that existed between his testimony and that of the Petitioner. However, characterizing the notes as the chief corroboration of Sheridan's testimony is a tacit admission on behalf of the Government that Senator McClellan's testimony was, in fact, meant to corroborate Sheridan.

3. The Petitioner does indeed contend that the Government must prove that the documents demanded were pertinent to the subject under inquiry by the Committee.

However, the characterization of some of the recipients of gifts as men of bad character taken from "special findings", which in no way concerned the Petitioner or Joint Council 41, is extremely sophisticated evidence of proof of pertinency or motive.

The characterization of the recipients of the gifts also formed the basis for the objectionable cross examination of the Petitioner (R. 256a, 257a, 258a) and the very inflammatory argument of the prosecutor to the jury (R. 334a).

The Government scores the Petitioner for insisting that the Government prove that the proper names on the demanded documents were pertinent to the subject under inquiry and then for objecting to the testimony identifying the persons to whom the champagne buckets had been given as evidence of such pertinency (Br. 53). However, at no time during the trial following the admission of the "special findings" of the Committee was that evidence used for any purpose except the characterization of Petitioner.

The fact that the Interim Report did not go to the jury room is without merit because the prejudicial parts had been fully aired before the jury.

Although that portion of the Interim Report which was used before the jury was never submitted to the jury during its deliberations, a much greater portion of the Interim Report was filed as a part of the record in the Petitioner's appeal to the Court of Appeals for the Sixth Circuit. The Petitioner filed a motion to strike the entire record on the ground that it had not been admitted into evidence. The Government sought to justify the inclusion of the Interim Report (R. 388-403) on the ground that it is a public document and was inserted for the convenience of the court. The Court of Appeals held the motion until the time of oral argument on the merits. That motion has never been ruled upon.

4. The prejudice of the Chairman's conclusions is set out in II A. 6 above.

However, it is not "entirely clear" to the Petitioner that evidence (a "major portion" being adduced to show motive) could form the basis for the Chairman's conclusions upon a matter of law which had been erroneously considered as a matter of fact, and fail to deprive the Petitioner of a fair trial.

What is clearer to the Petitioner is that the tutored reasons offered to justify the action of the trial court are sophisms.

CONCLUSION.

For the reasons set forth above it is respectfully submitted that the Petitioner is entitled to the relief prayed for in his Brief.

Respectfully submitted,

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